

S.D.I. Operating Partners, L.P., Harding Glass Division and Glaziers, Architectural Metal & Glass Workers Local Union No. 558, affiliated with International Brotherhood of Painters and Allied Trades, AFL-CIO, Petitioner. Case 17-RC-11262

April 30, 1996

DECISION, DIRECTION, AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND COHEN

The National Labor Relations Board, by a three-member panel, has considered determinative challenges in an election held August 11, 1995, and the hearing officer's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 5 for and 4 against the Petitioner, with 4 challenged ballots, a number sufficient to affect the results.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the record in light of the exceptions and brief and has adopted the hearing officer's findings and recommendations only to the extent consistent with this decision.¹ Contrary to the hearing officer, we find that David W. Decamp is not a supervisor under Section 2(11) of the Act, and that the challenge to his ballot should thus be overruled.

Decamp is a leadman glazier who has worked on field projects and at the time of the hearing was assigned to the Employer's auto glass shop. Before the start of a new field project, Decamp would meet with Facility Manager Gary Schamberger and Contract Manager Shane Riggs to discuss the Employer's staffing needs for the project. Schamberger testified that he made the ultimate determination regarding staffing, but relied on Decamp's input concerning the number of employees needed to accomplish the tasks involved in a particular project. As the highest ranking individual present at field locations, Decamp gave the other glaziers their assignments, distributing the work based in part on his past observations concerning the employees' qualifications. Decamp also instructed other employees as needed in accomplishing the work, relying on his own experience and expertise, as well as the instruction manuals provided by the suppliers of the products being installed. Decamp lacks the authority to grant overtime without consulting Schamberger, to re-

quire an employee to work overtime, which is voluntary, or generally to grant time off, although he did so on one occasion when an employee's wife called to report that the sheriff was at their home.

Contrary to the hearing officer, we find that the responsibilities carried out by Decamp with respect to the assignment and direction of employees do not demonstrate the exercise of independent judgment, but rather involve routine decisions typical of leadman positions that are found by the Board not to be statutory supervisors. See, e.g., *Hydro Conduit Corp.*, 254 NLRB 433 (1981); *Jordan Marsh Stores*, 317 NLRB 460, 467 (1995); *North Shores Weeklies*, 317 NLRB 1128 (1995); and *Brown & Root, Inc.*, 314 NLRB 19, 21-22 (1994). As a leadman, Decamp provides direction and guidance to other employees involved in a project based on his experience and craft skill. He directs employees to perform various necessary tasks according to the skills they have previously demonstrated, inquiring of the employees, as needed, whether a particular job is within their expertise. These responsibilities involve no real managerial discretion that would require the exercise of independent judgment. We particularly find that Decamp's participation with conceded supervisors in determining the Employer's staffing needs for a project does not render Decamp a supervisor. Responsibility for planning or designing a project, which may involve determining such matters as the appropriate staffing, materials, and schedule, must be distinguished from the exercise of authority and independent judgment in the role of assigning and directing employees in the accomplishment of the work. Decamp's input to Schamberger and Riggs regarding staffing does not alter the routine nature of his role in assigning and directing employees.

Similarly, we find that Decamp does not possess authority to discipline employees. The record shows that, as the leadman on field projects and in the auto glass shop, Decamp informs employees of the Employer's work rules regarding such matters as safety, breaks, and smoking, and corrects employees who fail to comply with those rules. Schamberger testified as follows concerning Decamp's authority in disciplinary matters, in response to questions from the counsel for the General Counsel:

Q. Has Mr. Decamp ever issued a disciplinary action against an employee?

A. He may have.

Q. Do you know specifically of an incident where he has disciplined someone or issued some sort of disciplinary warning?

A. No, I don't, but I'm not saying there isn't because I think there is a time or two in the past where Dave has done that.

Q. Okay. And in your—your best recollection of those time or two incidents in the past, did he

¹ In agreeing with the hearing officer that Michael D. Williams is an employee, we rely on the Supreme Court's recent decision in *NLRB v. Town & Country Electric*, 116 S.Ct. 450 (1995), vacating 34 F.3d 625 (8th Cir. 1994). No exceptions were filed concerning the ballots of John S. Vasconcellos and Darryl Fakhreich, and we adopt pro forma the hearing officer's recommendation to overrule the challenge to Vasconcellos' ballot and to sustain the challenge to Fakhreich's ballot.

actually fill out a form saying, you know, "Employee Joe Blow did X or failed to do X." He would fill out some sort of documentation to that effect?

A. I think it's something he made up, yes.

Q. Did he—what would he do with it? What do you recall him doing with this document that he prepared?

A. Confront the employee.

Q. And —

A. Probably have him sign it.

Q. Okay. And then what, if anything, would he do with it at that point? Would he give it to you?

A. Yes.

. . . .

Q. Those instances when he has written up some sort of disciplinary form or action against an employee, what did you do about that situation, if anything?

A. I don't think anything was done with it.

Decamp testified that he has never completed a company disciplinary form, but has provided written and oral reports of incidents to Schamberger.

Instructing employees concerning the Employer's rules, even in their breach, demonstrates neither authority over the employees nor the exercise of independent judgment as required by Section 2(11). Moreover, Schamberger's vague recollection does not establish that Decamp has in fact disciplined any employee, or that whatever possible action he may have taken had any effect, immediate or long term, on the employee involved. The evidence thus fails to show that Decamp has authority to discipline employees. See *Hydro Conduit*, supra at 437-438; *Jordan Marsh*, supra at 467; and *North Shore Weeklies*, supra at 1130.²

DIRECTION

IT IS DIRECTED that the Regional Director for Region 17 shall within 10 days from the date of this direction open and count the ballots of David W. Decamp, John S. Vasconcellos, and Michael D. Williams, and thereafter prepare and cause to be served on the parties a revised tally of ballots, upon which he shall issue the appropriate certification.

²We find it unnecessary to consider the secondary indicia relied on by the hearing officer, such as Decamp's pay differential, his not being required to punch a timeclock, his status as the most senior employee at the project site, and the lack of an onsite statutory supervisor if Decamp were not found to be one. In the absence of primary indicia as enumerated in Sec. 2(11), these secondary indicia are insufficient to establish supervisory status. See, e.g., *J. C. Brock Corp.*, 314 NLRB 157, 159 (1994); *Billows Electric Supply*, 311 NLRB 878 fn. 2 (1993); *Hydro Conduit*, supra at 441; and *Windemuller Electric*, 306 NLRB 664, 666-667 (1992), modified on other grounds 34 F.3d 384 (6th Cir. Sept. 14, 1994).

ORDER

It is ordered that the above-entitled matter be, and is, remanded to the Regional Director for Region 17 for further processing consistent with this decision.

MEMBER COHEN, dissenting in part.

Contrary to my colleagues, I would adopt the hearing officer's finding that Lead Glazier David W. Decamp is a supervisor.

As my colleagues concede, before the start of a new field project, the Employer's managers and Decamp meet to discuss staffing needs for the upcoming project. The Employer relies on Decamp's recommendations in determining that staffing.

In addition, on field projects, Decamp is the highest ranking individual present. He gives other glaziers their assignments, and these assignments are based, in substantial part, on his independent view of the employees' qualifications. Decamp also instructs employees concerning the methods for accomplishing their work, relying in this regard on his own expertise and experience.

In sum, Decamp uses independent judgment in directing and assigning employees. He also uses such judgment in making recommendations regarding staffing. As I have said elsewhere, the essence of an independent judgment is that it is based on one's personal experiences and expertise, rather than on some outside source.¹ That is the case with respect to Decamp's judgments here.

Further, the Employer (the party opposing a finding that Decamp is a supervisor) acknowledged that Decamp has exercised authority to discipline employees by issuing written reprimands to them.² Similarly, the Employer admitted that Decamp has the authority to decide, on his own, to let someone go home from the jobsite. I recognize that these exercises of supervisory authority have not been frequent. However, as the Board has often stated, individuals with statutory supervisory authority do not lose their status simply because they exercise that authority infrequently.³

Finally, as the hearing officer found, secondary indicia also suggest that Decamp is a supervisor. He is paid more than other glaziers and he does not use a timeclock. Further, if Decamp is not a supervisor, then glaziers working on field projects would generally be unsupervised.

For all of these reasons, I would adopt the hearing officer's finding of supervisory status.

¹See my dissenting opinions in *Providence Hospital*, 320 NLRB 717 (1996), and *Ten Broeck Commons*, 320 NLRB 806 (1996).

²Unlike the majority, I would not dismiss Schamberger's testimony in this regard as a "vague recollection." As a representative of the party opposing supervisory status, Schamberger's statement represents an admission of Decamp's authority.

³See, e.g., *DST Industries*, 310 NLRB 957, 958 (1993), and *Opelika Foundry*, 281 NLRB 897, 899 (1986), and cases cited there.